

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 591 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

HABIBMIYA P SINDHI

Appearance:

MR HARDIK C RAWAL for Petitioner

MR HARESH J TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 23/06/2000

ORAL JUDGEMENT

Heard learned counsel Mr. H.C. Rawal appearing
on behalf of the petitioner - Gujarat State Road
Transport Corporation (GSRTC) and learned counsel Mr.
H.J. Trivedi, appearing on behalf of the respondent

workman. Respondent Mr. Habibmiya P. Sindhi was appointed initially as an apprentice under the petitioner Corporation, and thereafter he was regularised in the post of Clerk on 5-9-1979. After the respondent has served 3 1/2 years in his post as Clerk, it was detected that at the time of entry in service the respondent crossed his maximum age limit for entry in service under the Corporation, and accordingly the services of the respondent was terminated by the petitioner Corporation. This termination order was challenged by the respondent before the Labour Court, Baroda and Reference (L.C.B) No. 379/82 was registered. Labour Court after hearing the parties and taking evidence set aside the order of termination, and passed an order for reinstatement with full back wages. Having felt aggrieved by the judgment & award of the Labour Court in Reference (LCB) 379/82 dated 18-6-1990 the Corporation has filed the present petition.

2. Mr. Rawal, learned counsel appearing on behalf of the Corporation has submitted that, if a person is not eligible for appointment to a post in the Corporation as per rules, then, even if such an appointment is made erroneously the Corporation is entitled to terminate the services of such an ineligible candidate. Accordingly learned counsel submitted that the Labour Court should not have been interfered with the order of termination of the respondent. Learned counsel for the respondent submitted that, the Labour Court has correctly decided that because of the mistake of the Corporation the respondent should not suffer and accordingly the Labour Court has taken a lenient view and set aside the termination order and directed the Corporation for reinstatement of respondent with full back wages.

3. I am of the view that, in the instant case Labour Court has taken a too liberal view. If a person is not eligible for appointment to a post as per the rules of the Corporation, then, even if such an appointment is made erroneously, the Corporation can correct the mistake by issuing a show cause notice to such a person. However in the instant case before terminating the services, petitioner Corporation has not issued show cause notice to the respondent. Because of this technicality, order of termination cannot be upheld. But the Labour Court has committed an error in holding that since the respondent has been appointed due to the mistake of the Corporation, he should be reinstated. However, it appears that the Labour Court has also taken a liberal view in the matter by not giving chance to the petitioner to terminate the services of the respondent after following rules of natural justice. However, in the

meantime the respondent has already been reinstated in service by the Corporation long back and he is now serving for all these years. Therefore, I do not like to interfere with the order of reinstatement of the respondent in service. However regarding back wages, I am of the view that the Labour Court has taken a too liberal view. The erroneous appointment can always be corrected by an authority. It cannot be held that once a mistake has been made it should be allowed to be continued. However, since I am not inclined to interfere with the order of reinstatement, I am of the view that the petitioner should not get full back wages. Payment of 50 % back wages will meet the ends of justice and accordingly the order of the Labour Court dated 18-6-1990 passed by Labour Court, Baroda in Reference (LCB) No: 379/82 is modified to the extent that instead of full back wages, the respondent workman will get 50 % of the back wages. With the aforesaid modification this petition is allowed in part. It is submitted by learned counsel for the respondent workman that, the Corporation has already paid 20 % of the back wages as per the interim order passed by the Court, therefore the Corporation may be directed to pay balance 30 % of the back wages within a short time. Learned counsel for the petitioner Corporation submitted that three months time may be allowed to the Corporation for payment of balance 30 % back wages. I am of the view that, three months time is not unreasonable and the Corporation is directed to pay the balance 30 % of the back wages to the respondent workman within a period of three months from today. Rule made absolute to the aforesaid extent. However, I make no order as to costs.

Dt: 23-6-2000

(P.K. Sarkar, J)

/vgn.